

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Creation of a Low)	MM Docket No. 99-25
Power Radio Service)	

To: Marlene H. Dortch, Secretary
Office of the Secretary

REPLY COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation (“EMF”), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission’s rules, hereby submits its reply comments in the above-captioned proceeding.^{1/} As has been amply demonstrated in this proceeding, FM translators, including those that are satellite-fed, provide an invaluable service to rural and niche listeners, offering high quality programming desired by radio listeners throughout the country. Many entities have expended substantial resources in the FM translator service and built up a devoted listenership. The value of these translators is demonstrated by the demand for new licenses in the recent translator filing window. While the supporters of LPFM have been unable to put forth evidence to contradict these assertions, a number of them along with other commenters have focused particularly on so-called “distant,” satellite-fed translators, requesting that the Commission make such translators secondary to LPFM stations as well as to terrestrially-fed translators. As the operator of more than 160 FM translator stations throughout the United States, many of which are satellite-fed, EMF opposes such proposals, which would undercut the demonstrated valuable

^{1/} *Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 99-25, FCC 05-75, (Mar. 17, 2005) (the “*FNPRM*”).

service that these stations provide and on which the public has come to rely. Moreover, it would be unfair for the Commission to change the rules of the road in the middle of the game – adversely affecting translators built and constructed based on an established regulatory scheme. Therefore, LPFM stations should not be given any preference over FM translators. The Commission should reject proposals that would increase the potential for interference between FM translator stations and LPFM stations and that would otherwise impair the FM translator service, but should consider other minor changes to its rules that would remedy identified problems without harming either the FM translator or LPFM service.

DISCUSSION

I. The Displacement of FM Translator Stations, Whether Satellite-fed or Terrestrially-fed, Would Harm the Public Interest

Existing translator networks such as that operated by EMF have been built consistent with and in response to longstanding Commission rules that permit noncommercial FM translators to operate on a non-fill-in basis and, if in the reserved band, to be fed by satellite from a commonly-owned primary station. In adopting these rules, the Commission specifically recognized “the likelihood that translator networks might be created,” but found that “such networks would not be inimical to the fundamental nature of the noncommercial educational FM translator service.”^{2/} The unique and invaluable service being provided by such stations demonstrates the validity of the Commission’s determination. Since April 2000, when the FCC adopted the window filing/point system procedure for selecting among competing noncommercial applicants and instituted a freeze on the filing of applications for new

^{2/} *Amendment of Part 74 of the Commission's Rules to Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators*, 3 FCC Rcd 2196, ¶ 17 (1988), *subsequent history omitted*.

noncommercial stations outside a filing window,^{3/} there have been few opportunities for new noncommercial FM translator service. Thus, the noncommercial translators currently in operation, including those that are satellite-fed, have typically been serving local communities for a number of years and have built up communities of loyal supporters of the niche programming they provide. These stations have a demonstrable history of public service and, in many cases, strong financial support from loyal local listeners is what keeps these stations on the air. In EMF's case, both ratings and donations data demonstrate that it provides a unique service on which listeners throughout the country have come to depend. By contrast, LPFM stations have no track record at all. Thus, there is simply no record evidence on which to base a decision that would result in the widespread replacement of the FM translator service, which has a demonstrated record of service in the public interest, with a unproven new service.

Moreover, EMF and a number of other public radio broadcasters have invested substantial time, effort and financial resources into constructing and maintaining their networks of translator stations, all in reliance on FCC rules that encouraged the creation of such networks as well as an FCC finding that such networks were entirely consistent with the noncommercial service mandate. Thus, fundamental fairness dictates that the Commission not take action to eradicate these networks absent compelling evidence that such action is both necessary and consistent with the public interest.

As in the *FNPRM*, commenters' primary justification for giving priority to LPFM stations is that such stations will enhance localism because they may originate programming. EMF has already pointed out the problems associated with the Commission's current definition of "local origination" as well as the flaws in the fundamental assumptions that underlie the

^{3/} See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report and Order*, 15 FCC Rcd 7386 (2000); *subsequent history omitted*.

imposition of a priority based on such a definition.^{4/} First, a requirement that programming be produced within ten miles of a station's transmitting antenna in no way guarantees that the station is addressing issues of special concern to the local community. Indeed, attempts by several commenters to distinguish satellite-fed translators from "local" (*i.e.*, fill-in or other terrestrially-fed) translators is subject to similar criticism. Specifically, EMF notes the irony of proposals by some licensees of NPR and PRI-affiliated stations to protect their "local" translators, but not satellite-fed translators.^{5/} However, the network programming broadcast on these stations is no more or less "local" than EMF's programming. Second, even assuming that a significant number of LPFM stations will have the resources to provide local news, traffic and weather or other such programming traditionally thought of as "local" (an assumption that is itself highly questionable), it has not been shown that this programming is of greater value than EMF's family-oriented Christian programming. Suggestions for redefining "local origination" to bar automated programming and limiting the number of times a given program may be broadcast do not remedy these concerns.^{6/} For instance, does a program featuring a volunteer disc jockey playing his favorite records really serve the public better than the high quality programming provided by EMF's translators or those of other public broadcasters?

^{4/} See Comments of EMF in this proceeding at 6-8.

^{5/} See Comments of the Colleges of the Seneca, Inc., licensee of NPR and PRI-affiliated WEOS(FM) and associated translator W212BA, Geneva, New York, at ¶ 12 (proposal to give LPFM stations and "local" translators priority over "distant" translators, defined as those located more than 400 kilometers from the originating station); Comments of Sacred Heart University, Inc., licensee of NPR-affiliated WSHU-FM, Fairfield, Connecticut, and WSUF(FM), Noyack, New York, and associated translator stations (opposing proposal to grant LPFM service primary status over locally-fed NCE translator stations).

^{6/} See Comments of Prometheus Radio Project *et al.* at 21.

While touting LPFM's local service, commenters who support giving LPFM stations priority over translators have provided scant evidence regarding that service. Valuable service is simply presumed. The claims of these LPFM supporters notwithstanding, evidence such as statements from listeners and donations data submitted in this proceeding by EMF and other public radio broadcasters demonstrate that noncommercial translators provide an important, highly valued public service. Without any empirical evidence that LPFM stations provide more valued service, the Commission cannot evaluate the relative merits of the two services, and any decision to prefer LPFM service is simply arbitrary. The Commission has a duty to uphold the public interest. Programming such as that of EMF, which addresses family and spiritual issues that are of high importance to segments of the communities in which EMF operates, serves the public interest.^{7/} As EMF indicated in its original comments, one way in which the Commission could enhance localism without harming the public interest would be to permit noncommercial FM translators to air Emergency Alert System announcements and other local announcements of particular interest to the communities in which the stations are located.

^{7/} Nevertheless, in the event that the Commission chooses to give LPFM stations priority over all FM translator stations or over some subset of FM translator stations, the public interest and fundamental fairness demand that the Commission grandfather *all* existing translators, including those that are satellite fed, so that the public will not lose a valuable service on which it has come to depend and so that the operations of nonprofit entities such as EMF, which have invested significant resources in operating a translator network, will not be impaired. For the same reasons, should the Commission adopt the proposal to permit terrestrially-fed translators to convert to LPFM, *see* Comments of Sacred Heart University at 7-10, satellite-fed translators should be given the same opportunity.

II. The Commission Should Reject Proposals that Would Increase the Potential for Interference Between FM Translator and LPFM Stations or that Would Otherwise Impair FM Translator Service, but Should Consider Changes that Would Remedy Identified Problems Without Harming Either Service

A. The Commission Should Reject Proposals to Dismiss or Further Delay Processing of Existing Translator Applications or to Change the Translator Eligibility or Processing Rules

Because translators provide such highly valued service to the public, dismissing or further delaying the processing of existing translator applications is not in the public interest. EMF also opposes suggested limitations on the number of translators that a licensee may own and on the number of translator applications that a single applicant may file. Such draconian measures are unnecessary and do not serve the public interest, and they are unfair to groups with more primary stations which may want to feed their programming to a network of translators. To the extent that the Commission believes that speculative filings pose a significant problem, it could instead consider restricting the number of applications within a single window that specify the same originating station. Likewise, suggested prohibitions on curative amendments for translator application defects are not in the public interest. Processing times for these applications are often quite long, especially where applications are mutually exclusive, and the time between filing windows has likewise been long. Thus, amendments are often necessary to speed processing and to maximize the number of applications that may be granted. Moreover, in EMF's experience, although assurance of the availability of a specified tower site may initially be obtained, tower availability will often change from month to month, and nonprofit organizations are often unable to tie up a specific position on a given tower for long periods of time prior to being issued a construction permit. Thus, through no fault of its own, an applicant may need to amend its application. The Commission's flexibility to provide applicants with the ability to file curative amendments must be preserved.

B. The Commission Should Reject the Proposal to Decrease the Spacings Between FM Translators and LPFM Stations

For “local” translator stations which it deems worthy of displacement protection, REC Networks (“REC”) suggests that the FCC divide these translators into eight “subclasses” based on the size of a station’s service contour in order to permit the initiation of a greater number of LPFM stations.^{8/} EMF opposes the adoption of this proposal because it would result in increased interference between translators and LPFM stations. As EMF indicated in its comments in this proceeding, signal penetration into buildings is often quite low for these low power facilities, resulting in greater reliance on mobile listenership. Thus, decreasing the spacing between these facilities will only increase the levels of interference to and from them and result in substantially reduced interference-free contours, thereby jeopardizing the ability of nonprofit translators and LPFM stations to develop the supportive listening audiences on which their survival depends. Why would anyone favor higher levels of interference that can only degrade the listener’s experience? The Commission should not condone such a proposal.

C. The Commission Should Adopt the Proposal to Use the Longley-Rice Methodology to Analyze the Interference Potential of LPFM Stations and FM Translator Stations

The National Translator Association suggests that the Commission use the Longley-Rice signal propagation methodology for analyzing the interference potential of LPFM stations and FM translators.^{9/} EMF agrees that mileage-based spacing for the LPFM service creates real-world problems, allowing LPFM operation on frequencies that meet the distance separations but still cause interference to full-power stations and are still subject to incoming interference that drastically reduces their coverage. The use of the Longley-Rice methodology could result in

^{8/} See Comments of REC Networks at 15.

^{9/} Comments of the National Translator Association at 5-6.

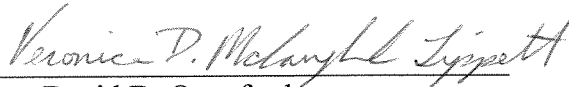
LPFM stations being located on "cleaner" frequencies, thereby resulting in less interference to full-power stations as well as larger interference-free contours for LPFM stations

CONCLUSION

For the foregoing reasons and those expressed in its comments in this proceeding, EMF reiterates its request that the Commission reject any proposal to give LPFM stations a preference over FM translator stations or full-power FM stations or to change the technical rules governing the LPFM service in any way that would increase the potential for interference by LPFM stations.

Respectfully submitted,

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